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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**

10 JASON C. DODGE,

11 Plaintiff,

12 v.

13 BNSF RAILWAY COMPANY a Delaware

14 corporation,

15 Defendant.
16

Case No. C08-5542 JKA

**ORDER GRANTING
PROTECTIVE ORDER**

17 This matter comes before the court on Plaintiff's Motion for Protective Order or in the
18 Alternative a Temporary Restraining Order. The court has considered all materials submitted in
19 support of and in response to said motion as well as the files and records herein.

20 The facts giving rise to this motion appear to be undisputed (Pl. Motion, pp3-4; Def.
21 Response, p2; Pl. Reply, pp1-2).

22 Plaintiff calls this court's attention to the ruling of the Honorable Marsha J. Pechman in
23 the matter of *Litowitz v. BNSF Railway Company*, C07-993, Western District of Washington.
24 Although the defendant, BNSF, argues that the facts are distinguishable, a review of the *Litowitz*
materials reveals no meaningful distinction relevant to the issue before the court.

25 Though not binding on this court the ruling of Judge Pechman in *Litowitz* fairly and
26 articulately considers the competing interests of the parties, the Federal Rules of Civil Procedure,
27 and the Railway Labor Act. By this reference the court incorporates the rationale set forth in

28 Order - 1

1 *Litowitz v. BNSF* Railway and enters the following Protective Order.

2 1. BNSF may not seek information from Plaintiff Dodge regarding his FELA claim except
3 through the procedures set forth in the Federal Rules of Civil Procedure.

4 2. BNSF may not contact Plaintiff except through counsel. BNSF may not conduct any
5 form of examination or interrogation of Plaintiff outside the presence of his attorneys.

6 3. Although the court is advised that BNSF cancelled the investigation to develop the
7 facts of the accident and assess fault (though proceeding with a fraud investigation against
8 plaintiff) nothing in this order is intended to preclude the continuation or renewal of such
9 investigation. BNSF may not, however, have access to Plaintiff in doing so. Thus, BNSF may
10 not require Plaintiff to appear, testify, or submit to cross-examination at any internal railroad
11 investigation arising out of or related to the incident of June 25, 2008, during the pendency of this
litigation.

12 Dated this 7th day of October 2008.

13 /s/ J. Kelley Arnold
14 J. Kelley Arnold
U.S. Magistrate Judge
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